

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JAMES E. KENNEDY,

Plaintiff,

V.

HEARTLAND COOP,

Defendant.

4:06CV3167

MEMORANDUM AND ORDER

This matter is before the court upon Plaintiff's motion for leave to file a Fourth Amended Complaint and for that amended complaint to relate back to the date of the filing of the original complaint, as provided in the court's October 31, 2006 order (filing 19). By January 31, 2007 order (filing 39), I established a briefing schedule for the motion to dismiss the Third Amended Complaint, anticipating that Plaintiff would file one, "Third Amended", complaint in response to the court's orders in filings 38 and 39. Plaintiff has chosen instead to file a "Third Amended" complaint in response to filing 38 and to file a motion for leave to file a "Fourth Amended" complaint in response to filing 39.

I will grant the pending motion and clarify the schedule for briefing the pending motion to dismiss. I provide a short time for filing the Fourth Amended Complaint, because in the past Plaintiff has taken over a week to file an amended complaint once leave was granted (see filings 19 and 20) and because delays in filing the Fourth Amended Complaint would result in additional delay in ruling on the pending motion to dismiss.

For the foregoing reasons,

IT IS ORDERED:

1. Plaintiff's motion for leave to file a Fourth Amended Complaint (filing 41) is granted;
2. Plaintiff shall file¹ a Fourth Amended Complaint identical in form to that attached as an exhibit to filing 41 on or before February 10, 2007;
3. Once filed, the Fourth Amended Complaint shall relate back to the filing of the original complaint, as provided in the court's October 31, 2006 order (filing 19);
4. The pending motion to dismiss (filing 28) is deemed to relate to the Fourth Amended Complaint, whenever it is filed;
5. In the event of noncompliance with this order, and without further notice, this action will be dismissed with prejudice;
6. If a Fourth Amended Complaint is timely filed,
 - a. Defendant shall submit a brief supporting its motion to dismiss that complaint on or before February 19, 2007;
 - b. Plaintiff shall submit a brief in response on or before March 1, 2007; and

¹Plaintiff should note NECivR 15.1, which provides that "[t]he granting of the motion for leave to amend does not constitute filing of the amended pleading. The party to whom the court grants leave to amend must then file the amended pleading, after leave is given."

- c. Defendant shall either submit a reply brief or a statement indicating it will not file a reply brief on or before March 12, 2007.

February 6, 2007

BY THE COURT:

s/Richard G. Kopf
United States District Judge